

APPEAL NO. 020594
FILED MAY 8, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 11, 2002. The hearing officer resolved the disputed issues before him by determining that the appellant (claimant) did not sustain an injury in the course and scope of his employment on _____; that the respondent (carrier) waived its right to contest compensability of the claimed injury by not contesting the injury in accordance with Section 409.021; that the claimant did not sustain a herniated disc at C6-7 as claimed, to which waiver might attach and make the claimed herniated disc compensable; and that the claimant did not have disability resulting from the claimed injury of _____. The claimant appealed the hearing officer's determinations that he did not sustain an injury and did not have disability. There is no response from the carrier in the file.

DECISION

Affirmed.

The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a); Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). As an appellate-level body, the Appeals Panel will not disturb the factual determinations of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Our review of the record in this case reveals that the hearing officer's determination that the claimant did not have an injury to his cervical spine to which waiver might attach is not so contrary to the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. See Continental Casualty Company v. Williamson, 971 S.W.2d 108 (Tex. App.-Tyler 1998, no pet. h.).

Because we affirm the hearing officer's decision that the claimant did not have an injury, we likewise affirm his decision that the claimant did not have disability. Section 401.011(16).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750
AUSTIN, TEXAS 78701.**

Daniel R. Barry
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

DISSENTING OPINION:

I respectfully dissent. Based upon my review of the record, I believe that the hearing officer's determination that the claimant did not have an injury, damage or harm to the physical structure of the body, at C6-7 is against the great weight of the evidence. In light of my belief in that regard, I further believe that the hearing officer erred in applying Continental Cas. Co. v. Williamson, 971 S.W.2d 108 (Tex. App.-Tyler 1998, no pet.) to determine that the carrier's failure to timely contest compensability in this instance was of no consequence. I would reverse and render a new decision that the claimant's cervical injury became compensable in accordance with Section 409.021(c) because of the carrier's failure to timely contest.

Elaine M. Chaney
Appeals Judge